IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.984 of 2007
In
Criminal Appeal No.876 of 1990

Shri Sahadu Rambhau Belhekar — Applicant
Vs.
State of Maharashtra — Respondent

Mr.Abhaykumar Apte for applicant.
Mr.A.S.Shitole, APP for State.

CORAM: B.H.MARLAPALLE, J.

August 31, 2007.

P.C.

. Heard Mr.Apte, the learned counsel for the applicant who was convicted for the offence punishable under Section 304 Part II of IPC and sentenced to suffer RI for five years and to pay a fine of Rs.3,000/- in default RI for one year more in Sessions Case No.55 of 1989. The said order of conviction and sentence was challenged in Criminal Appeal No.876 of 1990 and the appeal came to be dismissed by this Court on 2nd August 2007. Consequently the order of conviction and sentence has been confirmed.

. This application has been moved praying for the benefit under Section 4 of the Probation of

Offenders Act, 1958. The main ground for the application is that the applicant is the main bread earner in the family and he is due to retire from private employment within a couple of years. It has been further contended that after he was released on bail in Criminal Appeal No.876 of 1990, he has been living peacefully and there is no incident of any crime alleged against him. He further states that he is entitled for the benefit of Section 4 of the Probation of Offenders Act and has relied upon the following two decision :

(1) State of Karnataka Vs. Mudappa **[1999 SCC (Cri) 1046]**

(2) Sitaram Paswan & anr. Vs. State of Bihar **[2005 Cri.L.J. 4135]**

. In the case of Mudappa (supra) the appellant - accused no.3 alone was convicted by the learned Sessions Judge under Section 302 of IPC but on appeal the High Court had set aside the said conviction and instead convicted him under Section 304 Part II of IPC and the High Court examined the circumstances under which the blow was inflicted by the accused on

the deceased and on consideration of the provisions of Section 360 of Cr.P.C. as well as Section 4 of the Probation of Offenders Act, 1958, instead of sentencing him, directed to release the accused on admonition. In the case of Sitaram Paswan (Supra), the accused were convicted and sentenced for the offences punishable under Sections 323 and 324 of IPC.

. In the instant case the applicant is about 57 years of age and thus he is not too old. Admittedly he has two years to retire. He is not infirm and more important, the nature and circumstances of the attack that was inflicted by him on the deceased. The deceased had come as a guest to his brother's house in the neighbourhood of the accused and while he was leaving his brother's house after dinner, the accused called the deceased to his house and the deceased was taken by surprise when the accused started giving him abuses and fist blows. Consequently when the deceased was trying to escape from the attack and moved towards the road about 20 to 30 ft away from the house of the accused, the accused followed him, the wife of the accused brought from his house the spade and handed over to the

accused and on the road while the deceased was standing, the accused gave a blow on his head. These circumstances do not make out a case to release the accused on admonition and, therefore, I am satisfied that the applicant does not deserve to be released on probation by giving the benefits of Section 4 of the Probation of Offenders Act, 1958. The circumstances of this case are not comparable with the case of Mudappa (Supra).

. In the result, the application is rejected.

. Certified copy to be issued on priority.

(B.H.MARL